HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC., et al.,

Defendants.

Case No. No. 2:10-cv-01385-MJP

DEFENDANT FACEBOOK, INC.'S JOINDER IN DEFENDANTS GOOGLE INC. AND YOUTUBE, LLC'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO FED. R. CIV. R. 12(b)(6)

NOTED ON MOTION CALENDAR: November 12, 2010

I. INTRODUCTION AND RELIEF REQUESTED

Defendant Facebook, Inc. ("Facebook"), through its undersigned counsel, respectfully joins in the Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted Pursuant to Fed. R. Civ. P. 12(b)(6) filed by defendants Google Inc. and YouTube, LLC ("Google's Motion to Dismiss"). (D.I. 62.) Interval's complaint alleges that Facebook infringes U.S. Patent No. 6,757,682 (the "Fourth Cause of Action"), but does not indicate how the alleged infringement takes place, nor does it identify which products and/or services allegedly infringe. As such, Interval fails to meet the pleading requirements of the Federal Rules as interpreted by *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009) ("*Iqbal*"), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544

(2007) ("*Twombly*"). Because of this failure, Interval's Fourth Cause of Action should be dismissed.

II. FACTUAL BACKGROUND

On August 27, 2010, Interval filed its complaint alleging that Facebook along with AOL, Apple, eBay, Google, Netflix, Office Depot, OfficeMax, Staples, Yahoo, and YouTube infringe U.S. Patent No. 6,757,682 ("the '682 Patent"). (D.I. 1 at ¶¶ 45–55.) Interval's allegations as to the '682 Patent are identical as to each defendant and merely assert that each infringes "by making and using websites and associated hardware and software to provide alerts that information is of current interest to a user as claimed in the patent."[1] (*Id.*) Interval's allegations do not identify any Facebook products or services that are being accused of infringement, nor provide a factual basis for the infringement claim.

III. ARGUMENT

The Supreme Court's decision in *Twombly* makes clear that a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. The Court further specified in *Iqbal* that in order to be facially plausible, a claim must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949. "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 555, 557).

Interval's allegations in its Fourth Cause of Action against Facebook fail to state a claim for patent infringement under *Twombly* and *Iqbal* because they merely rephrase the title of the '682 Patent, add "websites and associated hardware and software," and state that Facebook's allegedly infringing activity is performed "as claimed in the patent." (D.I. 1 at ¶ 48.) Interval's

[1] The full text of the allegations against Facebook in the Interval complaint are as follows: "Defendant Facebook has infringed and continues to infringe one or more claims of the '682 patent. Facebook is liable for infringing the '682 patent under 35 U.S.C. § 271 by making and using websites and associated hardware and software to provide alerts that information is of current interest to a user as claimed in the patent." (*Id.* at ¶ 48.)

Fourth Cause of Action does not identify the products or services offered by Facebook that allegedly infringe or how Facebook has allegedly infringed the patent-in-suit. The use of identical allegations against all defendants, who provide widely varying products and services, underscores the lack of specificity of Interval's claims. For these reasons, Interval's Fourth Cause of Action does not satisfy the pleading requirements set forth in *Twombly* and *Iqbal*, warranting dismissal under Rule 12(b)(6) for failure to state a claim.

IV. CONCLUSION

For the foregoing reasons, and for the reasons discussed in Google's Motion to Dismiss, Facebook respectfully requests that the Court dismiss Interval's complaint as to the Fourth Cause of Action against Facebook for failure to state a claim upon which relief can be granted.

DATED this 22nd day of October, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2010, I electronically filed the following document(s): **DEFENDANT FACEBOOK, INC.'S JOINDER IN DEFENDANTS GOOGLE, INC. AND YOUTUBE, LLC'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO FED.R. CIV. P. 12(B)(6)** with the Clerk of the Court using the CM/ECF system, which will send an email notification of such filing to the attorney(s) of record listed below.

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